

Appl. No. 10/634,196
Reply to Office Action of July 3, 2006

OCT 03 2006

REMARKS

Applicants have received and reviewed an Office Action dated July 3, 2006. By way of response, Applicants have amended claims 1, 28 and 29 and present new claims 35 and 36. Claims 1-4, 13-33, and 35-36 are pending. No new matter is presented. Applicants submit that the pending claims are supported by the specification.

For the reasons given below, Applicants submit that the pending claims are in condition for allowance and notification to that effect is earnestly solicited.

Claim Amendments

Support for the ranges and ratios recited in the amended claims can be found throughout the specification including at page 11, lines 3-21, and page 12, line 14, through page 13, line 3.

Claim Rejections Under 35 U.S.C. § 103(a)

The Examiner maintained the rejection of claims 29-34 under 35 U.S.C. § 103(a) as being obvious over Smith et al. (US 6,617,303) in view of Baker et al. (US 2002/0119907) or Hei et al. (US 2002/0072288). The Examiner rejected claims 1-4, 13-17, 19, 20 and 22-33 under 35 U.S.C. § 103(a) as obvious over Man (US 6,425,959) in view of Baker et al. or Hei et al. The Examiner rejected claims 1-4, 13-17, 19, 20, 22-26 and 28-33 under 35 U.S.C. § 103(a) as obvious over Baker et al. in view of Smith et al. '303. The Examiner rejected claims 1-4, 13-17, 19, 20, 22-26, and 28-33 under 35 U.S.C. § 103(a) as obvious over Hei et al. in view of Smith et al. '303. The Examiner rejected claims 1, 2, 13-17, 19, 20, 22 and 24-32 under 35 U.S.C. § 103(a) as obvious over Smith et al. (US 2003/0070692) in view of Smith et al. '303. The Examiner rejected claims 1-4, 13-19, 22-25 and 28-33 under 35 U.S.C. § 103(a) as obvious over WO 95/04459 in view of Smith et al. '303. The Examiner rejected claim 21 under 35 U.S.C. § 103(a) as obvious over Baker et al., Hei et al., Smith et al. '692, all in view of Smith et al. '303, as applied to the rejected claims above, and further in view of Wulff et al. (US 5,962,399). The Examiner rejected claim 27 under 35 U.S.C. § 103(a) as obvious over Baker et al., or Hei et al., both in view of Smith et al. '303 as applied to claims 1-4, 13-17, 19, 20, 22-26, and 28 above, and further in view of Penninger et al. (US 6,228,827). Applicants respectfully traverse these rejections.

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The current claims are tailored around compositions that provide the advantageous and unexpected result of both being clear and having effective antimicrobial activity. The clarity and antimicrobial activity result from amounts and ratios of fatty acid antimicrobial agent and alkoxylated amine, which are recited in the independent claims. As described in the present application, "Conventional mixtures of fatty acid antimicrobial agents coupled with amines result in complexing, which has decreased stability of the composition, decreased antimicrobial activity, and/or caused additional disadvantages." (Present application as filed at least at page 1, lines 11-13.) The decreased stability is manifested as a lack of clarity to the liquid composition.

Specifically, independent claims 1, 28 and 29 recite a composition "comprising: about 1 to about 5 wt-% fatty acid antimicrobial agent; about 2 to about 12 wt-% alkoxylated amine" "the alkoxylated amine and fatty acid antimicrobial agent being at a weight ratio of about 2:1 to about 6:1;" "wherein the composition is clear and has effective antimicrobial activity."

Independent claims 35 and 36 recite a composition "consisting of: about 0.005 to about 20 wt-% fatty acid antimicrobial agent; about 0.1 to about 10 wt-% alkoxylated amine" "the alkoxylated amine and fatty acid antimicrobial agent being at a weight ratio of about 1:1 to about 9:1;" "carrier;" and "optionally anionic surfactant, amphoteric surfactant, nonionic surfactant, solvent, sequestrant, acidulant, adjuvant, or mixture thereof;" "wherein the composition is clear and has effective antimicrobial activity" (emphasis added).

The specification as filed provides experimental data demonstrating that compositions with the claimed amounts and ratios of fatty acid antimicrobial agent and alkoxylated amine advantageously and unexpectedly are clear and have effective antimicrobial activity. Other compositions are not clear or stable. These results are described, for example, at page 46, lines 9-16, and at page 50, lines 1-7. The claimed embodiments can remain stable and clear even at a temperature above 25° C (page 32, lines 17-19). The components of the presently claimed composition are combined in ratios and proportions that result in a clear and stable solution (page 5, lines 17-19).

According to the MPEP at 2144.05 II.B., the prior art must recognize the claimed parameter as a result-effective variable before the reference can be employed for determining that a range or ratio relating to that variable is obvious. A showing of an unexpected result or

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advantage of the range or ratio of that result-effective variable rebuts even a rejection based on a reference that recognizes such a variable (MPEP at 2144.05 II.C.).

The references employed in the present prior art rejections do not recognize the amounts or ratios of alkoxylated amine and fatty acid antimicrobial agent as having an effect on the clarity and antimicrobial activity a composition. In fact, the references cited in this rejection do not even mention such a ratio much less disclose or suggest such a ratio. Plus, the present application establishes unexpected advantages for the claimed amounts and ratios. Accordingly, by the standards expressed in the MPEP at 2144.05 II, the references cited in the prior art rejections do not teach or suggest the presently claimed invention.

Applicants incorporate herein by reference and maintain the characterization of the references provided in the previous response.

Accordingly, based on the foregoing differences, Applicants respectfully submit that neither reference cited in this rejection either alone, or in combination, teach or suggest the presently claimed compositions and methods. Withdrawal of these rejections is respectfully requested.

Double Patenting Rejection

The Examiner rejected claims 1-4, 13-25, and 29-33 under the judicially created doctrine of obviousness-type double patenting as obvious over claims 10-37 of U.S. Patent No. 6,593,283 in view of Smith et al. (U.S. 6,617,303). Applicants respectfully traverse this rejection.

Applicants have amended independent claims 1, 28, and 29. Should this rejection be applied to the amended claims, when the claims are otherwise in condition for allowance, if appropriate, Applicants will file a terminal disclaimer.

Summary

In summary, Applicants submit that each of claims 1-4, 13-33, and 35-36 are in condition for allowance, and notification to that effect is earnestly solicited. The Examiner is

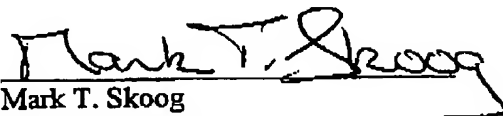
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invited to contact Applicant's undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this application.

Respectfully submitted,

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